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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>GEORGE SALTER,<br><br>Defendant and Appellant. | 2d Crim. No. B218129<br>(Super. Ct. No. F433169)<br>(San Luis Obispo County) |

George Salter appeals the order declaring him a mentally disordered offender (MDO) and committing him to the Department of Mental Health for treatment as a condition of his parole. (Pen. Code, § 2962 et seq.)[1] He contends the evidence is insufficient to support the trial court's finding that his severe mental disorder was not in remission at the time of the Board of Prison Terms (BPT) hearing. We affirm.

FACTS AND PROCEDURAL HISTORY

In 1998, appellant was convicted of attempted murder and was sentenced to 10 years is state prison. On May 19, 2009, the BPT certified appellant as an MDO and committed him for treatment. Appellant filed a petition challenging the BPT determination and waived jury trial. (§ 2966, subds. (b) & (c).)

[1] All statutory references are to the Penal Code unless otherwise stated.

Trial was held on July 17, 2009. Dr. Christopher Simonet, a forensic psychologist at Donovan State Prison, testified on behalf of the prosecution. Dr. Simonet interviewed appellant at the prison for approximately an hour on March 2, 2009, and reviewed his medical and mental health files. Based on this information, the doctor opined that appellant met all of the criteria for treatment as an MDO.

Appellant suffers from a schizophrenic spectrum disorder and paraphilia exhibitionism, both of which are severe mental disorders as contemplated by the MDO law. He was hospitalized for psychotic symptoms in 1996 and 1998. He also had a history of harming himself, including a self-cutting incident in 2003. In 2005, he was admitted to the prison's mental health crisis facility and involuntarily medicated pursuant to a *Keyhea*[2] order. Additional hospitalizations followed, the most recent of which was approximately two weeks prior to Dr. Simonet's interview.

When appellant was symptomatic, he showed signs of responding to internal stimuli and mumbled to himself about his "enemies." At other times, he was mute, incoherent, and nonresponsive. He suffered from a preoccupation with religion, and said God had commanded him to kill his girlfriend. He also had a history of exhibitionism and had been arrested for indecent exposure.

During the interview, appellant initially denied suffering from any mental disorder and attempted to minimize the extent of his symptoms. At another point, he acknowledged suffering from psychiatric symptoms for 12 years. When confronted with the records regarding the *Keyhea* order, he said he had "lost his mind" as a result of being placed in lockdown for a long period of time. He later claimed it was the result of medications he believed were wrongfully prescribed to him. He also made frequent comments about God, Satan, and the Bible. He told Dr. Simonet that his commitment offense, in which he repeatedly stabbed his girlfriend in the head, was intended to be a sacrifice to God and that God had told him to do it. Based on these statements and

[2] (*Keyhea v. Rushen* (1986) 178 Cal.App.3d 526, 530.)

appellant's medical history, Dr. Simonet concluded that appellant's mental disorder was a cause or aggravating factor in his commission of the offense.

Dr. Simonet concluded that appellant's severe mental disorder was not in remission as contemplated by section 2962, subdivision (a). Less than two weeks prior to the interview, appellant had been in a crisis bed "for various signs of psychosis and some threatening behavior." During that time, appellant was incoherent and appeared to be responding to internal stimuli. His hospitalization had been precipitated by an incident in which he "had been hostile toward other inmates, throwing water at them on the pill line" and thereafter instigated a fight with his cellmate. Jail personnel had also found a rope and a broken glass in his cell. Dr. Simonet further noted that appellant had made illogical statements during the interview and showed signs of hyper mania and disorganization. The doctor suspected that appellant was also "being manipulative, at least in the sense of what he was reporting with respect to his sexual behavior." These observations led Dr. Simonet to conclude that appellant "had not resolved his symptoms adequately to be called in remission."

Dr. Simonet also concluded that appellant represented a substantial danger of physical harm to others by reason of his mental disorder. Appellant's current mental state was similar to his mental state at the time he committed the commitment offense. He continued to have a religious preoccupation and had recently engaged in hostile and violent behavior. Appellant also "seemed ambivalent" about the need to participate in treatment upon his release, and believed he could control his sexual deviancy through prayer.

On cross-examination, Dr. Simonet admitted he had not seen appellant or reviewed his file since he interviewed him on March 2. The doctor also acknowledged he had not spoken to anyone on the team that had treated appellant since his transfer to Atascadero State Hospital (ASH) on March 18, 2009.

Dr. Joe Debruin, a forensic psychologist at ASH, testified on appellant's behalf. Dr. Debruin interviewed appellant on June 30, 2009, and spoke to his treating psychologist and psychiatrist. He also reviewed appellant's records, the notes and charts

prepared by ASH staff, and Dr. Simonet's report. Based on this information, Dr. Debruin concluded that appellant did not qualify for MDO treatment. Although appellant had been diagnosed with schizoaffective disorder, bipolar type, Dr. Debruin believed the disorder was in remission when he interviewed appellant on June 30. During that interview, appellant was cooperative and showed a full range of affect. Although appellant was also somewhat manipulative, vague and "glib" in his responses, he did not exhibit any psychotic symptoms. Appellant also acknowledged his mental illness and the need to take psychiatric medication after he left the hospital.

Dr. Debruin also relied on statements made by appellant's treating psychologist, Dr. Moreno, to the effect that appellant was in remission and was not demonstrating or reporting symptoms of psychosis. According to appellant's treatment plan, he was reported to be asymptomatic when he was admitted to ASH on March 18. The plan's report of appellant as oriented, calm, and interactive was consistent with Dr. Debruin's observations when he interviewed appellant on June 30. The doctor's observations were also consistent with psychological assessment statements that appellant's "speech was articulate" and that "[h]is thought processes were clear and concise." Dr. Debruin acknowledged that appellant's treating psychiatrist, Dr. Josek, was of the opinion that appellant was *not* in remission. He considered Dr. Josek's opinion in forming his own opinion, but found the reports and assessments of hospital staff who treated appellant on a day-to-day basis to be more persuasive because they were in line with his own observations.

The lack of any reports of psychiatric symptoms from December 2006 to December 2008 led Dr. Debruin to believe there was also "a very high chance" that appellant was in remission during that two-year time period. The doctor considered this important because it demonstrated that the schizoaffective disorder appellant suffers from is "not normally a disorder that just sort of comes and goes." With regard to the reports of psychiatric symptoms appellant displayed in February 2009, the doctor believed he may have been malingering in order to retain his level of care.

Dr. Debruin also concluded that appellant did not currently represent a substantial danger of harm to others by reason of his mental disorder because he had been in remission for "an adequate amount of time." While he acknowledged that appellant's commitment offense was "profound," he characterized his criminal history as "not robust in terms of the overall scope."

On cross-examination, Dr. Debruin agreed that a schizoaffective disorder patient's period of illness can last for years or even decades, and that such a period of illness is considered to have ended only "when the individual has completely recovered for a significant interval of time." The doctor also agreed that the determination whether a patient has recovered for a significant interval of time is a subjective one upon which reasonable mental health professionals can differ. He also acknowledged that appellant was not consistently reliable in his self-reporting.

At the conclusion of the hearing, the trial court found that appellant qualified as an MDO. In finding that appellant was not in remission at the time of the BPT hearing, the court stated, "I'm particularly concerned about the incidents which happened in February 2009 and how the presentation is consistent with his earlier, and specifically, the behaviors in 2005. The notes reflected in January 2009 where the petitioner endorsed hallucinations and the religious basis for them are particularly concerning, and I'm going to deny the petition and find that . . . he does meet the criteria."

## DISCUSSION

Appellant contends the commitment order must be reversed because the evidence is insufficient to support the court's finding that his severe mental disorder was not in remission when the BPT hearing was held on May 19, 2009. We disagree.

In considering the sufficiency of the evidence in support of MDO findings, we review the entire record in the light most favorable to the judgment to ascertain if there is any reasonable, credible evidence to support the challenged finding. (*People v. Beeson* (2002) 99 Cal.App.4th 1393, 1398.) We do not redetermine the credibility of witnesses or reweigh the evidence, and all conflicts are resolved in favor of the judgment. (*People v. Poe* (1999) 74 Cal.App.4th 826, 830.)

A prisoner is subject to involuntary treatment as an MDO if the prosecution demonstrates, among other factors, that his severe mental disorder "is not in remission or cannot be kept in remission without treatment." (§ 2962, subd. (a).) "The term 'remission' means a finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support. A person 'cannot be kept in remission without treatment' if during the year prior to the question being before the Board of Prison Terms or a trial court, he or she has been in remission and he or she has been physically violent, except in self-defense, or he or she has made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family, or he or she has intentionally caused property damage, or he or she has not voluntarily followed the treatment plan. . . ." (*Ibid.*)

Substantial evidence supports not only the court's express finding that appellant's severe mental disorder was not in remission at the time of the BPT hearing, but also its implicit finding that the disorder could not be kept in remission without treatment as contemplated by the MDO law. In addressing the issue of remission, the court stated it was "particularly concerned about the incidents which happened in February 2009," i.e., the incident in which appellant had to be placed in a crisis bed for what Dr. Simonet characterized as "various signs of psychosis and some threatening behavior." In opining that appellant was not in remission, Dr. Simonet explained that appellant "had been hostile toward other inmates, throwing water at them on the pill line" and had attempted to fight his cell mate. A rope and broken glass were also found in appellant's cell. Appellant's own expert testified there was a "very high chance" that appellant had been in remission in the months preceding the incident. Moreover, Dr. Debruin did not address the issue whether appellant could be kept in remission without treatment as contemplated by subdivision (a) of section 2962, nor does appellant do so on appeal.

The evidence is also sufficient to support the finding that appellant was not in remission as of the date of the BPT hearing on May 19, 2009. In arguing to the

contrary, appellant primarily focuses on the fact that Dr. Simonet interviewed appellant over two months before the BPT hearing while he was still in prison, while Dr. Debruin interviewed him on June 30, 2009, after he was transferred to ASH. He claims the court essentially had to reject Dr. Simonet's opinion in favor of Dr. Debruin's, which "merely confirmed virtually all of the other evidence and opinions provided to DeBruin concerning appellant's condition while at ASH." According to appellant, it was "the virtually unanimous view of appellant's treatment team" that he had been asymptomatic from the time he arrived at ASH on March 18, 2009, until Dr. Debruin interviewed him on June 30.

Appellant's claim is meritless. The "virtually unanimous view" he touts omits that of his treating psychiatrist, who opined that appellant was *not* in remission as of the date of the BPT hearing. Moreover, Dr. Debruin not only admitted that he "completely disregarded" that opinion, but also acknowledged that his own diagnosis was "guarded" and that appellant was not a consistent and reliable self-reporter.

In any event, appellant's focus on the timing of the doctors' evaluations is misplaced. Both doctors agreed that the clinical determination as to the amount of time a patient suffering from schizoaffective disorder must remain asymptomatic in order to be found in remission is a subjective one, and that the answer is one upon which reasonable mental health professionals might differ.[3] When Dr. Simonet interviewed appellant on March 2, appellant initially denied having a mental illness and then attempted to minimize his symptoms. He also exhibited psychotic behavior similar to that which precipitated his commitment offense. Moreover, only two weeks before the interview he was psychotic to the point he had to be hospitalized and involuntarily medicated. Under the circumstances, it was reasonable to infer that appellant could not have been

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[3] In his reply brief, appellant asserts that this factor is irrelevant because the MDO law defines remission as "a finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support." Appellant fails to appreciate that the professional determination whether a patient's symptoms "are controlled" is based in part on the amount of time he or she has remained asymptomatic.

asymptomatic long enough to be in remission when the BPT hearing was held less than three months later.

The judgment (order of commitment) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

COFFEE, J.

Linda D. Hurst, Judge

Superior Court County of San Luis Obispo

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